

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

E.I. DU PONT DE NEMOURS
AND COMPANY,
NL INDUSTRIES, INC.,
AND SUNOCO, INC.,

Defendants.

CIVIL ACTION NO.: 07-1304-MLB

CIVIL COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, at the request of the Administrator of the United States Environmental Protection Agency (EPA), files this complaint and alleges as follows:

INTRODUCTION

1. The United States brings this civil action on behalf of the EPA against E.I. du Pont de Nemours and Company (Du Pont), NL Industries, Inc. (NL), and Sunoco, Inc. (Sunoco) (collectively Defendants) under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606 & 9607(a). In this action the United States seeks: (1) an order requiring Defendants to implement EPA's selected environmental remedy for the Waco Subsite of the Cherokee County Superfund Site in Cherokee County, Kansas (Waco Subsite); (2) an order requiring Defendants to reimburse the United States for costs that EPA has incurred in response to releases or threatened releases of hazardous substances at the Waco Subsite; and (3) a declaration that Defendants are liable for all future response costs that may be incurred by EPA in connection with the Waco Subsite. Additionally, the United States seeks: (1) an order requiring Sunoco to implement EPA's selected environmental remedy for the Waco

Designated Area of the Jasper County Superfund Site (Waco Missouri DA) in Jasper County, Missouri; (2) an order requiring Sunoco to reimburse the United States for costs that EPA has incurred in response to releases or threatened releases of hazardous substances at the Waco Missouri DA; and (3) a declaration that Sunoco is liable for all future response costs that may be incurred by EPA in connection with the Waco Missouri DA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and each defendant pursuant to Sections 106, 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims arose in this District and releases and/or threatened releases of hazardous substances at the Waco Subsite occurred in this District, and because Defendants may be found in this District .

DEFENDANTS

4. E.I du Pont de Nemours and Company is a Delaware corporation.
5. NL Industries, Inc., is a New Jersey corporation.
6. Sunoco, Inc., is a Pennsylvania corporation.

STATUTORY FRAMEWORK

7. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of, such hazardous substance.

8. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42,237 (August 14, 1981), reprinted in 42 U.S.C.A. § 9615 at 544-48.

9. Section 106 of CERCLA, 42 U.S.C. § 9606, provides:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

10. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State * * * not inconsistent with the national contingency plan * * *

GENERAL ALLEGATIONS

11. The Cherokee County Superfund Site (the Site) in southwest Kansas represents the Kansas portion of the former Tri-State mining district. The Site is contaminated with mining wastes as a result of lead and zinc ore mining and processing that began in Kansas in the 1870s and continued until 1970. EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

12. EPA has divided the Site into seven Operable Units (OUs) for administrative efficiency in conducting environmental cleanups. In September 2004, EPA issued a Record of Decision selecting the agency's environmental remedy for OU6. OU6 includes the Waco Subsite, located in the northern portion of the Site

13. Each of the Defendants is a "person" within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

14. Each of the Defendants was an owner and/or operator at the Waco Subsite at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

15. Sunoco was an owner and/or operator at the Waco Missouri DA at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

16. The Waco Subsite is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and as used in Section 107 of CERCLA, 42 U.S.C. § 9607.

17. The Waco Missouri DA is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and as used in Section 107 of CERCLA, 42 U.S.C. § 9607.

18. Materials located at the Waco Subsite and at the Waco Missouri DA include “hazardous substances” and/or “pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare,” within the meaning of Sections 101(14), 104, and 107 of CERCLA, 42 U.S.C. §§ 9601(14), 9604, and 9607.

19. There have been and continue to be “releases” or “substantial threats of releases” of such hazardous substances or pollutants or contaminants into the environment in and around the Waco Subsite and the Waco Missouri DA within the meaning of Sections 101(22), 104, and 107 of CERCLA, 42 U.S.C. §§ 9601(22), 9604, and 9607.

20. The United States has undertaken, and continues to undertake removal, remedial, and other response actions at the Waco Subsite and at the Waco Missouri DA in response to releases or threatened releases of hazardous substances, pollutants, and contaminants within the meaning of Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607.

21. As a result of the releases or threatened releases of hazardous substances from the Waco Subsite and the Waco Missouri DA the United States has incurred and will continue to incur, “response costs,” including costs of removal and/or remedial action, as defined in Sections 101(23), (24), and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25), and as used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

22. The response actions taken by the United States at the Waco Subsite and the Waco Missouri DA were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

**CLAIM FOR INJUNCTIVE RELIEF
UNDER SECTION 106 OF CERCLA**

23. Paragraphs 1-22 are realleged and incorporated by reference.

24. Defendants are liable under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to take such actions as EPA determines are necessary to protect public health and welfare and the environment at the Waco Subsite.

25. Sunoco is liable under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to take such actions as EPA determines are necessary to protect public health and welfare and the environment at the Waco Missouri DA.

SECOND CLAIM FOR RELIEF

**CLAIM FOR RECOVERY OF RESPONSE COSTS
UNDER SECTION 107(a)(1) AND (2) OF CERCLA**

26. Paragraphs 1-25 are realleged and incorporated by reference.

27. Defendants are liable under Sections 107(a)(1) and (2) of CERCLA for all costs incurred by the United States on behalf of EPA in response to releases or threatened releases of hazardous substances at the Waco Subsite.

28. Sunoco is liable under Sections 107(a)(1) and (2) of CERCLA for all costs incurred by the United States on behalf of EPA in response to releases or threatened releases of hazardous substances at the Waco Missouri DA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

A. Award the United States a judgment against the Defendants for all costs incurred by the United States in response to releases or threatened releases of hazardous substances at the Waco Subsite.

B. Award the United States a judgment against Sunoco for all costs incurred by the United States in response to releases or threatened releases of hazardous substances at the Waco Missouri DA.

C. Enter an order requiring the Defendants to implement EPA's selected remedy for the Waco Subsite.

D. Enter an order requiring Sunoco to implement EPA's selected remedy for the Waco Missouri DA.

E. Enter a declaratory judgment on liability against the Defendants as provided in Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any subsequent action or actions to recover further response costs or damages at the Waco Subsite.

F. Enter a declaratory judgment on liability against Sunoco as provided in Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any subsequent action or actions to recover further response costs or damages at the Waco Missouri DA.

G. Grant such other and further relief as is appropriate.

Respectfully submitted,

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REQUEST FOR PLACE OF TRIAL

The defendant, United States of America, requests that the above-entitled cause be placed on the docket for trial at the City of Wichita, Kansas.

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